DOUGLAS TAY GUAN SHUNG

v.

CHUNG SU LAN

HIGH COURT BORNEO, KOTA KINABALU
WAN MOHAMED J
[CIVIL SUIT NO. K476 OF 1981]
3 SEPTEMBER 1982

CIVIL PROCEDURE: *Application by summons in chambers to strike out statement of claim - Triable issue - Whether discloses a reasonable cause of action - Transfer of land - Whether a trust was created.*

The case of the plaintiff was that, by a written agreement in Chinese he had bought two pieces of land from Four Squares Enterprise Co. (Sabah) Ltd., for a fully paid sum of RM21,000. The company transferred the land to the plaintiff's solicitor Datuk Shelley Yap the deceased who was to have held it in trust for the plaintiff. On many occasions he had requested the deceased to transfer the land to him but of no avail. On the death of Datuk Shelley Yap, his wife, the defendant became the administratix of the estate of her deceased husband, which included the land in dispute.

It was not disputed that the land was registered in the name of the deceased. The defendant alleged that her husband was the *bona fide* purchaser and owner of the said land and that it was not held on trust for plaintiff or anyone at all. She made an application by summons-in-chambers to strike out the plaintiff's claim on the grounds that, there was no reasonable cause of action.

Held:
There was a triable issue, viz; whether the land in question was held by the deceased on trust for the plaintiff and therefore he should be given chance to be heard at a trial.

[Application dismissed. Costs in the cause. Early trial ordered.]

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19(1)(a), (b), (d)

For the plaintiff - Lawrence Thien; M/s. Chau & Thien
For the defendant - Gerald Math; M/s. Shelley Yap Leong Tseu Chong Chia & Co.

JUDGMENT

Wan Mohamed J:

The plaintiff in this case filed a writ of summons against the defendant who is the administratix of the estate of her husband, Datuk Shelley Yap Yeok Siew. The plaintiff alleges that, in accordance with an agreement written in Chinese, he had bought two pieces of land from Four Squares Enterprise Co. (Sabah) Ltd., for a sum of RM21,000 the amount of which he had settled in full. The two pieces of land however were transferred by the company to the deceased, Datuk Shelley Yap, who was the plaintiff's solicitor. As such, the plaintiff says that the deceased, Datuk Shelley Yap, held the lands in trust for the plaintiff. The plaintiff therefore prays for an order that the defendant, as the administratix of the estate of Datuk Shelley Yap, transfer the said two pieces of land to the plaintiff.

The defendant entered appearance and without filing the defence made this application by summons-in-chambers for an order under O. 18, r. 19(1)(a)(b) and (d) to strike out the plaintiff's claim on the grounds that:

(a) it discloses no reasonable cause of action;

(b) it is scandalous, frivolous and vexatious;

(c) it is otherwise an abuse of the process of the Court.

In her affidavit the defendant affirmed and stated facts to the following effect:

(1) Her deceased husband, Datuk Shelley Yap Yeok Siew, was a *bona fide* purchaser for value of the said lands;

(2) The deceased (Datuk Shelley Yap Yeok Siew) had no knowledge that there was a sale and purchase agreement between the Plaintiff and the former owner of the lands (Four Squares Enterprise Co. (Sabah) Ltd.);

(3) That the deceased had no knowledge that the Plaintiff had paid RM21,000 as the full purchase price to the former owner of the lands;

(4) There was no privity of contract between the Plaintiff and her deceased husband (Datuk Shelley Yap Yeok Siew);

(5) The land was duly transferred to defendant's deceased husband on 30 January 1973 and the plaintiff had never registered any interest in the lands in question;

(6) The fact that her deceased husband was a solicitor of the plaintiff is irrelevant to the issue in question;

(7) That her deceased husband did not hold the land on trust for the plaintiff.

The plaintiff in his affidavit in reply stated that:

(i) He entered into a sale and purchase agreement written in Chinese with one, Lo Se Tsung, a director of and on behalf of Four Squares Enterprise Co. (Sabah) Ltd., for the purchase of the two pieces of land in question for RM21,000 and that the whole amount had been paid;

(ii) The two pieces of land were transferred to the deceased, Datuk Shelley Yap Yeok Siew, with an understanding that Datuk Shelley Yap was to hold on trust for the Plaintiff - see para. 5 of the Affidavit in Reply sworn by Plaintiff on 21 July 1982;

(iii) Plaintiff had made numerous requests to the deceased (Datuk Shelley Yap Yeok Siew) to have the said lands transferred to him but of no avail.

In this case the deceased, Datuk Shelley Yap Yeok Siew, left some properties now being administered by the defendant by Grant of Letters of Administration in accordance with the law. It is during the period of the administration that a person having any claim or interest in the properties of the deceased is given the right and opportunity to institute his claim. In this case, the plaintiff makes such claim against the defendant as administratix of the estate of the deceased (Datuk Shelley Yap Yeok Siew).

It is an undisputed fact that the two pieces of land are registered in the name of the deceased. The plaintiff alleges that the deceased held the land on trust for him (plaintiff) while the administratix denies the allegation and says that the deceased was the actual owner of the land and that deceased was a *bona fide* purchaser for value and as such did not hold it on trust for plaintiff or anyone at all.

It is now for the Court to decide as to whether there is any triable issue and also to consider whether the claim instituted by the plaintiff:

(a) discloses no reasonable cause of action;

(b) is scandalous, frivolous and vexatious; or

(c) is otherwise an abuse of the process of the Court.

From the facts so far presented before me both in the pleadings and the affidavits presented by both parties it is clear to me that there is a triable issue, viz; whether the land in question was held by the deceased, Datuk Shelley Yap Yeok Siew, on trust for the plaintiff. I strongly feel that the plaintiff be given a chance to be heard at a trial.

I therefore dismiss the application of the defendant for an order to strike out the Plaintiff's claim and the costs of this application to be costs in the cause and I also order early trial.

Also found at [1983] 1 CLJ 44